IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICANT(s):	Gerald Sugerman	Conf. No:	4332
SERIAL NO.:	09/581,781	ART UNIT:	1614
FILING DATE:	June 17, 2000	EXAMINER:	Jones, Dwayne C.
TITLE:	LOW ENVIRONMENTAL TOXICITY LATEX COATING		
ATTORNEY DOCKET NO.:	VOC 429		

MAIL STOP APPEAL BRIEF
Commissioner of Patents
P.O. Box 1450
Alexandria, VA 22313-1450

APPEAL BRIEF

TABLE OF CONTENTS

REAL PARTY IN INTEREST

The applicant inventor has assigned his entire right, title and interest to VOCFREE, Inc., 163 South Street, Hackensack, NJ 07601

RELATED APPEALS AND INTERFERENCES

There are no other appeals or interferences known to appellant, the appellant's legal representative, or assignee which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

STATUS OF CLAIMS

Claims 1, 3-8, 10, 13 and 20-24 are in the application and stand rejected. Claims 2, 9 and 11-19 have been withdrawn.

The rejection of claims 1, 3-8, 10, 13 and 20-24 is appealed.

STATUS OF AMENDMENTS

Amendments to the claims have been presented after final rejection. An advisory action with regard to those amended claims has not been received by applicant. It is thus unknown whether such claims are entered for purposes of appeal.

SUMMARY OF CLAIMED SUBJECT MATTER

Independent claim 1 relates to compositions comprising a nonvolatile carbon-carbon double bond containing amine in combination with hydroxy bearing, unsaturated esters and/or ethers and/or ether-esters, and/or combinations of non-hydroxy bearing, unsaturated esters and/or ethers and/or ether-esters, and/or saturated hydroxyl bearing etherified and/or esterified oligomeric glycols and/or oligools.

Independent claim 3 claims compositions comprising essentially nonvolatile carbon-carbon double bond containing amines and organic solvent coalescents.

Claim 22 is a product-by-process claim where the low environmental toxicity composition of claim 1 is made by a process comprising combining an essentially nonvolatile carbon-carbon double bond containing amine; with a hydroxyl-bearing unsaturated ester or ether or ether-ester, or an unsaturated hydroxyl-bearing oligomeric glycol or oligool.

Independent claim 23 claims a method of making a low environmental toxicity composition by combining an essentially nonvolatile carbon-carbon double bond containing amine with a hydroxyl-bearing unsaturated ester or ether or ether-ester, or an unsaturated hydroxyl-bearing oligomeric glycol or oligool.The remaining claims limit claims 1 or 2 in various ways.

Claim 4 adds a latex resin to the composition of claim 1. Claim 7 limits the latex resin to those derived from poly vinyl acetate and/or acrylic and/or a copolymer thereof.

Claim 5 adds hypersurfactants to the composition of claim 1. Claim 6 limits the hypersurfactants to those derived from titanium or zirconium based organometallics.

Claim 8 limits the non-amine component to a hydroxyl-bearing unsaturated ester or ether or ether-ester, or an unsaturated hydroxyl-bearing oligomeric glycol or oligool.

Claim 10 limits the non-amine component to a hydroxyl-bearing unsaturated ester or ether or ether-ester and a saturated or saturated hydroxyl-bearing oligomeric glycol or oligool.

Claim 13 limits the non-amine component to a hydroxyl-bearing unsaturated ester and a saturated or unsaturated hydroxyl-bearing oligomeric glycol or oligool.

Claim 20 limits the non-amine component to a hydroxyl-bearing unsaturated ether-ester.

Claim 21 limits the non-amine component to a hydroxyl-bearing unsaturated ester or ether or ether-ester and a non-hydroxyl-containing unsaturated ester or ether or ether-ester.

Claim 24 limits the composition of claim 1 to those comprising a hydroxyl bearing etherified or esterified oligomeric glycol or oligool.

GROUNDS FOR REJECTION TO BE REVIEWED ON APPEAL

Issue 1. **Does Riediker et al., USP 4,857,654, render claims 1, 3-8, 10, 13,120, 21, and 24 unpatentable under 35 U.S.C. 102(b)?**

Issue 2. **Are claims 1-3, 8, 10, 3 and 20-24 unpatentable under 35 U.S.C. 103(a)as being obvious over Riediker et al., USP 4,847,654?**

Argument

Issue 1. Does Riediker et al., USP 4,857,654, render claims 1, 3-8, 10, 13,120, 21, and 24 unpatentable under 35 U.S.C. 102(b)?

Riediker et al. USP 4,857,654 does not render claims 1, 3-8, 10, 13,120, 21, and 24 unpatentable under 35 U.S.C. 102(b).

It is asserted in the final Office Action that Riediker et al. teach the presence of a compound with carbon-carbon unsaturation, namely dialkylaminorriethyldifluorobromophenyl ...."

Applicants traverse.

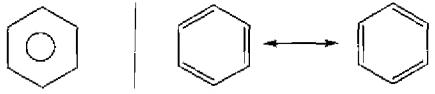
Riediker mentions methods of making titanocene derivatives substituted by tertiary aminomethyl groups, and generically refers to dialkylaminomethyldifluorobromophenyl lithium compounds; however, Riedeker fails to describe any titanocene compound (see, for example, col. 5, lines 24-35 and the Examples at col. Col. 15) having an amino group therein.

Applicants submit that for at least this reason, Riediker et al. does not anticipate Applicants claimed subject matter.

However, to clarify the issue even further, in the Amendment After Final Applicants have amended claims 1, 3-8, 10, 13, 20-21, and 24 to recite amines having a "carbon-carbon double bond". Amines having a carbon-carbon double bond are not described in Riediker.

Riediker arguably alludes to titanocenes having aromatic groups (i.e., dialkyl-amino methyl difluoro bromophenyl groups), but such compounds do not have carbon-carbon double bonds therein. The aromatic carbon-carbon bonds are a hybrid bond typically depicted as

represented by formula (A), or as Kekule structures, that is, as a hybrid of formulae (B) and (C).



(A) (B) (C)

Such compounds are not considered to be comprised of carbon-carbon double bonds. Bonds between adjacent carbon atoms on (A) - (C) are neither single nor double bonds; rather they are a hybrid of single and double bonds.

In contrast, Applicants claimed subject matter (as also exemplified in Applicants' representative examples and in Table 1 of Applicants' specification) contains carbon-carbon double bond containing amines. As such, any alleged teaching of compounds (i.e., titanocenes in the Action) by Riedeker fails to anticipate Applicants' claimed subject matter.

Moreover, the assertion in the Final Office Action that "triethylene glycol dimethacrylate" described in Riediker et al. is an example of a hydroxyl bearing unsaturated ester is incorrect.

"Triethylene glycol dimethacrylate" has no hydroxy group. Applicants additionally submit that for at least this reason, the assertion in the Action that Riediker et al. anticipates Applicants' claimed subject matter is incorrect.

For all the above reasons, Applicant's believe the 34 USC 102 (b) rejection is improper and should not be upheld.

***Issue 2*. Are claims 1-3, 8, 10, 3 and 20-24 unpatentable under 35 U.S.C. 103(a)as being obvious over Riediker t al., USP 4,847,654?**

Claims 1-3, 8, 10, 3 and 20-24 are not obvious over Riediker t al., USP 4,847,654.

As stated above in response to the rejection under 102(b), the assertions in the Action that "Riediker et al. "teach the presence of an amine compound with carbon-carbon unsaturation, namely dialkyl aminomethyl difiuoro bromophenyl .."„" is an overbroad interperetaton as there is not a single example of a dialkyl amino methyl difiuoro bromophenyl compound as disclosed by Riedeker.

As stated above, the assertion in the Action that "triethylene glycol dimethacrylate" described in Riediker et al. is an example of a hydroxyl bearing unsaturated ester is incorrect. The triethylene glycol dimethacrylate compound has no hydroxy group, and therefore cannot be suggestive of a hydroxyl bearing unsaturated ester to one of ordinary skill.

It is well established that all limitations must be taught or suggested in order to establish a *prima facie* case of obviousness. See, MPEP 2143.03. The references must be viewed without the benefit of impermissible hindsight afforded by the claimed invention.

Here, the sole reference does not disclose or suggest hydroxyl bearing unsaturated esters.

Further Riedeker et al. does not disclose carbon-carbon double bonds as required by the amendment in applicant's response to the Final Office Action.

Thus, Applicants submit that a *prima facie* case has not been made out in the Action.

In conclusion, Applicant believes the decision of the examiner rejecting all the claims in the application should be reversed.

Any fee due with this paper, not already paid through an EFS-Web filing, may be charged to Deposit Account No. 50-3894. Any overpayment may be credited to Deposit Account No. 50-3894.

Respectfully submitted,

MYERS WOLIN, LLC

Serle Ian Mosoff
Attorney for Applicant(s)
Reg. No. 25,900

Customer Number 61650

Phone: 973-401-7157
Fax: 866-864-3947

Claim Appendix

1.(Currently Amended) Compositions of matter comprising:

essentially nonvolatile carbon-carbon double bond ~~unsaturation~~ containing amines; hydroxy bearing, unsaturated esters and/or ethers and/or ether-esters, and/or combinations of non-hydroxy bearing, unsaturated esters and/or ethers and/or ether-esters, and/or saturated hydroxyl bearing etherified and/or esterified oligomeric glycols and/or oligools.

2.(Withdrawn) Compositions of matter comprising:

volatile amines and/or ammonia neutralizers;

hydroxyl bearing, unsaturated esters and/or ethers and/or ether-esters; and/or combinations of non-hydroxy bearing, unsaturated esters and/or ethers and/or ether-esters, and/or saturated hydroxyl bearing etherified and/or esterified oligomeric glycols and/or oligools.

3.(Currently Amended) Compositions of matter comprising: essentially nonvolatile carbon-carbon double bond containing amines and organic solvent coalescents.

4.(Previously presented) Compositions of matter as defined in claim 1 having as an additional component latex resin.

5.(Previously presented) Compositions of matter as defined in claim 1 having hypersurfactants as an additional component.

6.(Original) Compositions of matter as defined in Claim 5 in which the hypersurfactants are derived from titanium or zirconium based organometallics.

7.(Original) Compositions of matter as defined in claim 4 in which the latex resin is derived from poly vinyl acetate and/or acrylic and/or a copolymer thereof.

8.(Currently amended) The composition of claim 1, comprising:

an essentially nonvolatile carbon-carbon double bond ~~unsaturation~~ containing amine; and

a hydroxyl-bearing unsaturated ester or ether or ether-ester, or an unsaturated hydroxyl-bearing oligomeric glycol or oligool.

9.(Withdrawn) The composition of claim 1, comprising:

an essentially nonvolatile carbon-carbon double bond ~~unsaturation~~ containing amine; a non-hydroxyl-bearing unsaturated ester or ether or ether-ester; and

a saturated or unsaturated hydroxyl-bearing oligomeric glycol or oligool.

10.(Currently Amended) The composition of claim 1, comprising:

an essentially nonvolatile carbon-carbon double bond ~~unsaturation~~ containing amine; a hydroxyl-bearing unsaturated ester or ether or ether-ester; and

a saturated or unsaturated hydroxyl-bearing oligomeric glycol or oligool.

11.(Withdrawn) The composition of claim 1, comprising:

an essentially nonvolatile carbon-carbon double bond ~~unsaturation~~ containing amine; an unsaturated ester; and

a saturated or unsaturated hydroxyl-bearing oligomeric glycol or oligool.

12.(Withdrawn) The composition of claim 1, comprising: an essentially nonvolatile carbon-carbon double bond ~~unsaturation~~ containing amine;

a non-hydroxyl-bearing unsaturated ester; and

a saturated or unsaturated hydroxyl-bearing oligomeric glycol or oligool.

13.(Withdrawn) The composition of claim 1, comprising:

an essentially nonvolatile carbon-carbon double bond ~~unsaturation~~ containing amine; a hydroxyl-bearing unsaturated ester; and

a saturated or unsaturated hydroxyl-bearing oligomeric glycol or oligool.

14.(Withdrawn) The composition of claim 1, comprising:

an essentially nonvolatile carbon-carbon double bond ~~unsaturation~~ containing amine;
an unsaturated ether; and

a saturated or unsaturated hydroxyl-bearing oligomeric glycol or oligool.

15. (Withdrawn) The composition of claim 1, comprising:

an essentially nonvolatile carbon-carbon double bond ~~unsaturation~~ containing amine; an hydroxyl-bearing unsaturated ether; and

a saturated or unsaturated hydroxyl-bearing oligomeric glycol or oligool.

16. (Withdrawn) The composition of claim 1, comprising:

an essentially nonvolatile carbon-carbon double bond ~~unsaturation~~ containing amine; a non-hydroxyl bearing unsaturated ether; and

a saturated or unsaturated hydroxyl-bearing oligomeric glycol or oligool.

17. (Withdrawn) The composition of claim 1, comprising:

an essentially nonvolatile carbon-carbon double bond ~~unsaturation~~ containing amine; an unsaturated ether-ester; and

a saturated or unsaturated hydroxyl-bearing oligomeric glycol or oligool.

18. (Withdrawn) The composition of claim 1, comprising:

an essentially nonvolatile carbon-carbon double bond ~~unsaturation~~ containing amine; a hydroxyl-bearing saturated ether-ester; and

a saturated or unsaturated hydroxyl-bearing oligomeric glycol or oligool.

19.(Withdrawn) The composition of claim 1, comprising:

an essentially nonvolatile carbon-carbon double bond ~~unsaturation~~ containing amine; a non-hydroxyl-bearing unsaturated ether-ester; and

a saturated or unsaturated hydroxyl-bearing oligomeric glycol or oligool.

20.(Currently Amended) The composition of claim 1, comprising:

an essentially nonvolatile carbon-carbon double bond ~~unsaturation~~ containing amine; and

a hydroxyl-bearing unsaturated ether-ester.

21. (Currently Amended) The composition of claim 1, comprising: an essentially nonvolatile carbon-carbon double bond ~~unsaturation~~ containing amine, a hydroxyl-bearing unsaturated ester or ether or ether-ester; and a non-hydroxyl-containing unsaturated ester or ether or ether-ester.

22.(Currently Amended) The composition of claim 1, comprising: a low environmental toxicity composition, made by a process comprising of combining;

(i) an essentially nonvolatile carbon-carbon double bond ~~unsaturation~~ containing amine; and

(ii) a hydroxyl-bearing unsaturated ester or ether or ether-ester, or an unsaturated hydroxyl-bearing oligomeric glycol or oligool.

23.(Currently Amended) A method of making a low environmental toxicity composition, comprising of combining:

(i) an essentially nonvolatile carbon-carbon double bond ~~unsaturation~~ containing amine and

ii) a hydroxyl-bearing unsaturated ester or ether or ether-ester, or an unsaturated hydroxyl-bearing oligomeric glycol or oligool.

24.(Previously Presented) A composition of claim 1,comprising a hydroxyl bearing etherified or esterified oligomeric glycol or oligool.

Evidence Appendix

None

Related Proceedings Appendix

None